

1 If you've got a situation where
2 country clubs are offering the product and the
3 country clubs are discriminating, why the hell
4 would they want to pitch to women? They don't
5 want them anyway. They don't want them in
6 their game in that context of the game. They
7 want them different ways, the women's -- what
8 do they call it, the PGAs and they have the
9 LGA?

10 THE WITNESS: LPGA.

11 JUDGE SIPPEL: Yes. But that's
12 not the same thing. And they seem to want to
13 identify it that way. I'm not saying that the
14 programmers are doing this, but it wouldn't
15 surprise me if they were getting some kind of
16 pressure from the clubs themselves. You're
17 not going to bring programming on to the
18 Masters and do it as you like it. You're
19 going to do it as they like it.

20 THE WITNESS: Yes.

21 JUDGE SIPPEL: That body called,
22 whatever governance they have on the course

1 for the club. That's why Kelly Tilghman will
2 probably never play on the Masters in her
3 lifetime. How does that strike you? Am I
4 overstating the situation?

5 THE WITNESS: It strikes me in two
6 ways. One is as the father of two daughters,
7 I'm not -- I'm hoping they have the same
8 opportunity in life that my son does.

9 JUDGE SIPPEL: They won't. They
10 certainly won't if they want to play in the
11 Masters, right?

12 THE WITNESS: Correct. They're
13 not going to play in the Masters. I guess
14 they could play on the LPGA tour.

15 JUDGE SIPPEL: That's true.

16 THE WITNESS: They would be
17 getting started a little late to make that
18 level.

19 JUDGE SIPPEL: We had a good Negro
20 League for years, but it wasn't quite the
21 same, baseball.

22 THE WITNESS: I don't want to

1 mislead you in the sense of Golf Channel
2 excluding women. I don't think it does.

3 JUDGE SIPPEL: I'm not saying the
4 channel -- no, no.

5 THE WITNESS: I think they're
6 playing to their audience is what it is and
7 they're -- as I said, they're polite and calm
8 and mature and authoritative. There is
9 certainly no evidence that they're
10 exclusionary in any way in what they're
11 programming.

12 But you know, with so many
13 choices, these things in the end become
14 advertising vehicles, right?

15 JUDGE SIPPEL: I appreciate that.
16 I buy that as they say. Absolutely.

17 THE WITNESS: So with that many
18 different options, I think you've got to have
19 a personality. You've got to know who you are
20 because otherwise it's going to be hard for
21 people to know who you are and I think that's
22 what they're after.

1 JUDGE SIPPEL: This is really far
2 afield, but I'm wondering if anybody has ever
3 written, quote, the book about how the
4 mystique of Arnold Palmer was created. To me,
5 that's a fantastic story. When I was growing
6 up, we had Sam Snead who was another famous
7 golfer at the same time. These were very,
8 very fine golfers, very, very famous. But
9 they never had -- whatever it was, whether it
10 was a PR thing or -- Palmer came a little bit
11 later. It was amazing as an observer.

12 Now you may have more insight into
13 it than I.

14 THE WITNESS: I just share your
15 amazement there and I think it's germane to
16 this case in a way or related to this case.
17 I think one of the things that happened is
18 television. And Arnie became the first
19 television golf star.

20 JUDGE SIPPEL: That's true.

21 THE WITNESS: And it really took
22 off from there. Plus he had that -- and still

1 has -- that irrepressible personality. His
2 swing -- I don't know if you're a golfer. I
3 am a golfer, a lousy golfer.

4 JUDGE SIPPEL: I've seen a lot of
5 golf. I've caddied a lot. And I have played.
6 I have played.

7 THE WITNESS: So you know what a
8 good swing looks like. Arnie didn't have a
9 good swing. He looks like every man out there
10 and yet, he's phenomenal. So I think
11 television and his personality, his style,
12 really caught the public imagination. And I
13 think that's what happened.

14 JUDGE SIPPEL: Ben Hogan was the
15 other name. He was at the tail end of his
16 career when I was old enough to even
17 appreciate it. But of course, you're right.
18 There was some television coverage, but
19 nothing like what Arnold Palmer had.

20 THE WITNESS: Exactly.

21 JUDGE SIPPEL: That's a good
22 answer. I've hogged the whole --

1 MR. TOSCANO: Your questions are
2 much better than mine, if you want to keep
3 going.

4 JUDGE SIPPEL: And I don't get
5 paid by the hour.

6 (Laughter.)

7 Go ahead, please.

8 MR. TOSCANO: Thank you, Your
9 Honor.

10 BY MR. TOSCANO:

11 Q Mr. Egan, you've talked about the
12 many dissimilarities between The Golf Channel
13 and Tennis Channel. Can you also talk about
14 the dissimilarities between Versus and Tennis
15 Channel and start with the non-event
16 programming.

17 A Versus, it's name is a giveaway,
18 right? Versus is a -- from what I saw both in
19 watching and in studying their schedules is a
20 very competition-oriented, violent, aggressive
21 is probably the better word there, aggressive
22 channel, very male oriented. So that's a

1 distinguishing feature to tennis. Tennis,
2 obviously has competition and it's fierce
3 competition, but this is another level. We're
4 talking about hunting and fishing. Often
5 called, I like the term guys use, hooks and
6 bullets programming, right?

7 So one third, fully one third of
8 the time you turn on Versus you're going to
9 run into hooks and bullets. One third of the
10 time. And it is an amazing compilation. I
11 have to be honest with you. I grew up
12 watching television and it was the hunting and
13 fishing stuff that was on there was sort of
14 one static nature. There wasn't a lot of
15 others. But what was on there probably a
16 program in early morning or late night was
17 sort of old fashioned hunting and fishing.

18 Well, this ain't your
19 grandmother's hunting and fishing shows that
20 are on there. There are dozens of titles and
21 they range from good old fashioned hunting and
22 fishing, Jimmy Houston's Outdoors. He's a

1 good old boy from the South and he's talking
2 to you and he's fishing, catching bass or
3 whatever to Federal Premium Dangerous Game in
4 which it's a reality show and two guys are out
5 in some dangerous part of the world like
6 Africa and they're hunting water buffalo which
7 it turns out is an incredibly dangerous and
8 aggressive animal. And of course it leads to
9 that moment, you know, that the thing is going
10 to turn and charge. And you're sitting there
11 and say oh my God, if he doesn't get this shot
12 off, we're all dead, you know? It's very
13 dramatic. And of course, he makes the shot.
14 And they do freeze frame and graphics on it.
15 It's very contemporary production.

16 JUDGE SIPPEL: Can they do that in
17 a real reality sense?

18 THE WITNESS: No, because that
19 means that the camera man's life is at risk as
20 well, right? Now maybe there are camera men -
21 -

22 JUDGE SIPPEL: You might have a

1 hook or something and then you --

2 (Laughter)

3 THE WITNESS: Yeah, I mean I can't
4 tell you that I ever produced a show like
5 that. So I don't really know. But my sense
6 is that it's probably somebody behind them
7 with a big gun or something who is going to
8 stop that thing. But I mean it's dramatic and
9 they're shooting in low light conditions
10 because the cameras that we have today allow
11 that. So they're out at night tracking. You
12 just couldn't do that in the old days. So
13 it's a reality show, very dramatic.

14 They have another one like that
15 called Elk Fever which isn't as aggressive in
16 that sense, but it's more strategic and you
17 follow a hunt. And they're out like in
18 Colorado hunting elk. And it goes through
19 multiple days and a very knowledgeable guide.
20 And he's telling you about the wind and about
21 the conditions and this and that. And so you
22 sort of become part of the hunt and you're

1 following and again, they use graphics and
2 they'll show you the terrain and the
3 topography and so very interesting the way
4 they do it.

5 My point at any rate is they do
6 have the old fashioned hooks and bullets
7 stuff, but they have much more contemporary
8 hunting and fishing stuff.

9 JUDGE SIPPEL: That is geared, I
10 don't mean to interrupt you. But I'm assuming
11 that's -- they're trying to attract a male
12 audience in a certain age.

13 THE WITNESS: I believe so. I
14 believe so. And it's going to lend itself to
15 more of a middle America. It's not going to
16 be for the most part, an urban audience.
17 There are urban hunters, but it plays well to
18 the C and D counties as opposed to the A and
19 B counties.

20 JUDGE SIPPEL: You have to watch
21 out for urban hunters. We had a vice
22 president that hunted.

1 (Laughter.)

2 THE WITNESS: I remember. So
3 that's one very large portion of what's on
4 Versus, non-event programming, but they also
5 have some other things that range from wacky,
6 almost MTV'ish shows. They have something
7 called Wacked Out Sports in which they do
8 these crazy stunts, riding motorcycles off
9 buildings and trying to see if they can land
10 on a thing, and of course, it goes badly. Mud
11 wrestling, and all this stuff, and clearly,
12 targeted to sort of like an MTV'ish, younger,
13 male audience.

14 JUDGE SIPPEL: Do they have an IQ
15 quotient or something that they appeal to? Or
16 is this --

17 THE WITNESS: You know, the
18 interesting thing about Versus as I think I
19 mentioned, I hope I did. To me, Golf Channel
20 and Tennis Channel are -- have a very, for the
21 most part, defined content and personality.
22 Versus is a kaleidoscope. It covers 20

1 different sports.

2 JUDGE SIPPEL: Can you name them -
3 or, as many as you can name, I should ask you
4 that.

5 THE WITNESS: So NHL Hockey which
6 is their marquee stuff. They air in 2010 just
7 the year I looked at in depth they aired 133
8 hockey games, 63 of those being playoffs, two
9 of those being the Stanley Cup finals. I
10 mean, you know, this is the fourth major
11 league sport in the United States, big-time
12 stuff. Then - and by the way, they have news
13 built around that too. They have NHL Overtime
14 I think is the name of the show. So during
15 the season there's a half an hour, an hour
16 live hockey news and it's hockey pro and
17 hockey amateur, they cover it all. And so
18 like I mentioned about golf where it's, you
19 know, golf central, you tune in and boom,
20 you're a golf expert at the moment you can do
21 the same thing with hockey there. Bang,
22 you'll get it all right there. Then they

1 range to the - the Hooks and Bullets shows
2 that we talked about, the wacky kind of
3 things. They have the Tour de France biking
4 which again is a, you know, to me a different
5 feel to it, a different kind of person's going
6 to watch that. I haven't done any research on
7 this but I have several friends who are
8 bikers, pedal bikers, serious, and they're all
9 you know upper middle class guys and they're
10 serious about it. And they cover that stuff
11 live and same-day, really long blocks of time
12 believe it or not. They've got cameras all
13 over and they're showing you the race as it
14 happens. And I have a brother-in-law who's
15 one of these guys and to him it's like, you
16 know, the Academy Awards is to my wife. Don't
17 come near me when this is on. This is what
18 I'm doing, right? And he, you know, he's a
19 schoolteacher so luckily he's off and he can
20 just sit there and watch.

21 JUDGE SIPPEL: Well, what are the
22 commercials? They're not selling beer for

1 that too or what are they selling in the
2 commercials?

3 THE WITNESS: You know, I have to
4 be honest with you, I don't -

5 JUDGE SIPPEL: Bottled water?

6 THE WITNESS: I can't say. I
7 don't know. I don't know the answer to that.
8 My guesstimate is that there's some upscale
9 products in there but I don't know what it is,
10 you know.

11 JUDGE SIPPEL: Please keep going.

12 THE WITNESS: Yes, so - so we've -
13 and they have several bike tours, Tour de
14 California, and some of these other things.
15 They have some things as diverse as a
16 highlights show on the Israeli basketball
17 league, you know? They have the NBA D League
18 which is the step below the NBA league that we
19 all know of that -

20 JUDGE SIPPEL: What was it called,
21 the NBA?

22 THE WITNESS: D.

1 JUDGE SIPPEL: Delta?

2 THE WITNESS: Development.

3 JUDGE SIPPEL: Development?

4 THE WITNESS: Development League,

5 D, with a D. And it's sort of a minor - not

6 sort of, it is a minor league for the NBA.

7 And Versus covers it live and same-day delay.

8 And I'm a big basketball guy, I love

9 basketball, so I love watching it and it's

10 unadorned and it goes fast, there's not a lot

11 of breaks, you can watch basketball games and

12 these are the guys who are you know hopefully

13 up-and-coming. They've got - I'm also a big

14 snow sport guy. They've got snowboarding,

15 skiing events on there as well. I don't know

16 how many I've named so far but they have a lot

17 of different sports. I counted them up once,

18 it's over 20. Professional bull-riding, they

19 cover that live and same-day, bull-riding.

20 JUDGE SIPPEL: I wouldn't even

21 call that a sport but I guess it is a sport.

22 I mean -

1 THE WITNESS: Oh yes. Well don't
2 say -

3 JUDGE SIPPEL: No, I know what it
4 involves, but I mean it's like bullfighting.
5 I don't know if that's a sport.

6 THE WITNESS: Well no, this is -

7 JUDGE SIPPEL: But bull-riding is
8 not really - I'm just trying to piece it
9 through my own mind. Okay. I'll go with
10 sport.

11 THE WITNESS: Again, it's like
12 America. It's a kaleidoscope out there and
13 there are people that do these things and they
14 are deep into it. And they do indie car which
15 is one of the formats of car racing, you know,
16 just indie is the name of the format.

17 JUDGE SIPPEL: Is that stock car
18 or is that the other kind?

19 THE WITNESS: It's another kind.
20 And I'm not a car racing guy so don't ask me
21 anything more beyond that, but it's a certain
22 kind of car, it's a certain kind of tour and

1 again they cover it live and same-day delay.
2 So you know, what have we ticked off here?
3 We've ticked off hunting and fishing, NHL
4 hockey, basketball D league, indie car racing,
5 bull-riding. Oh, they also cover college
6 football. So big-time college football live
7 and they have that on Versus.

8 JUDGE SIPPEL: Really? Do they do
9 something like the Patriot League, something
10 like that or is it all simply big-time?

11 THE WITNESS: Again I haven't seen
12 the Patriot League on there. The ones I've
13 seen are more of the southern, you know,
14 southeastern, south central teams but again,
15 I didn't - to be honest with you I didn't
16 study exactly which leagues they've got.

17 JUDGE SIPPEL: No, I'm just
18 curious.

19 THE WITNESS: But they're big-time
20 schools and they get substantial ratings on
21 that stuff.

22 JUDGE SIPPEL: How about this -

1 what is it called? Cage fighting or something
2 like that.

3 THE WITNESS: Yes.

4 JUDGE SIPPEL: Is that something
5 that we can't talk about here, we've got to
6 close the doors or what?

7 THE WITNESS: No, no. Maybe as an
8 insight into America it's a fascinating thing.
9 You know, it's cage fighting is what it is and
10 they might have three matches or four matches
11 in an event, in a show and guys get in there
12 and they, you know, they beat the heck out of
13 each other and then related to that is the
14 UFC, Ultimate Fighting Championship. You
15 know, it's like kick-boxing and they murder
16 each other. And again, very male-oriented
17 obviously and very, very violent and you know
18 again for that cohort if you will that wants
19 that stuff they love it.

20 JUDGE SIPPEL: How big are this -
21 how big of an audience does that - I mean, not
22 cage-fighting per se but how big of an

1 audience does Versus have?

2 THE WITNESS: Versus gets very
3 good ratings. They - Versus subscribes to
4 national Nielsen ratings so they're reported
5 daily and they also subscribe to all of the
6 local market ratings. So they get ratings
7 constantly. Their ratings like their
8 programming varies, it's all over the lot, but
9 on a total day basis all right, so if we just
10 average everything through the year Versus is
11 getting ratings like a [REDACTED] rating on a total
12 day basis. Their hockey, their hockey stuff
13 is their highest rated stuff so they're
14 running, like for instance I think in last
15 year's NHL playoffs they actually got about a
16 [REDACTED] rating on one or more of their NHL playoff
17 games. That's a big number, that's a huge
18 number. I mean, that's a good number on ESPN.
19 That's a big number. So they range from that
20 to you know I don't know what the ratings are
21 for WEC cage-fighting, but I'm sure that it's,
22 you know, it's -

1 JUDGE SIPPEL: What does WEC stand
2 for?

3 THE WITNESS: That's, again -

4 JUDGE SIPPEL: World something or
5 other?

6 THE WITNESS: I don't know what it
7 stands for but it's just the sponsoring
8 organization that runs the fighting tour if
9 you will. Like we talked about ATP being the
10 tennis organization that runs a tour.

11 JUDGE SIPPEL: Right, right,
12 right.

13 THE WITNESS: It's just the same
14 thing. Or NBA runs basketball.

15 JUDGE SIPPEL: Sorry, I'm taking a
16 lot of time on it. Do they - so they don't
17 care any - I mean, I'm not trying to be - let
18 me put the - well, they're really not -
19 they're not seeking the female consumer for
20 advertising on that particular channel. You
21 tell me.

22 THE WITNESS: Your Honor, I

1 didn't, you know, do a detailed study of that
2 question, all right? But I will tell you that
3 based on the evidence I've seen, I've seen
4 demographics of who they are reaching and
5 their demographics skew very heavily to men,
6 okay? Their audience composition and I
7 actually do have it in my report so I'll try
8 and find it as we're talking but their
9 audience composition is ■ percent or more
10 men. And you know, and obviously the minority
11 being women. So Versus is very heavily skewed
12 towards men and when you watch the channel,
13 you know, that makes sense. So here's Versus
14 summer 2010, ■ percent men. Fall 2009, ■
15 percent men.

16 JUDGE SIPPEL: That's a lot.

17 THE WITNESS: Yes. So you know,
18 it's male. Golf Channel also very male, ■
19 percent men in summer 2010, ■ percent male
20 fall 2009. So you know that is - presumably
21 that's their target audience and they're
22 hitting it. So.

1 JUDGE SIPPEL: So okay. Well that
 2 - I had one other thought but it's not really
 3 that important. Well, just as an observation
 4 I know - there's a book, I think it's called
 5 The Outliers and this person goes through
 6 different kinds of experiences in life and
 7 what it does to you. And they starts with the
 8 hockey program up in Canada and depending on
 9 when you are born, whether you're born early
 10 in the year or later in the year is going to
 11 depend - is going to almost dictate whether or
 12 not you're going to get up to the professional
 13 ranks in Canada.

14 THE WITNESS: Is that right?

15 JUDGE SIPPEL: Yes.

16 THE WITNESS: Because you're more
 17 mature when you hit those benchmark moments.

18 JUDGE SIPPEL: They move you up -
 19 that's exactly right. When you hit a certain
 20 age if you're good they're going to move you
 21 up to the next level and of course you're -
 22 the competition intensifies and the coaching

1 becomes much, much better. And you're going
 2 to bump up much faster than the guy behind you
 3 is not going to be - who's trying to compete
 4 with you up at the top isn't going to have
 5 that. And statistically apparently they lose
 6 out.

7 THE WITNESS: So that's -

8 JUDGE SIPPEL: There's another
 9 interesting statistic, I don't know how this
 10 was really done, but if anybody is going, you
 11 know, serious mountain-climbing up to one of
 12 these big things, K-12 or something like that,
 13 whatever it is, K - you're better off going
 14 with a group that has a woman in the group
 15 because they survive - those groups survive
 16 statistically more than an all-male group.

17 THE WITNESS: Is that right?

18 JUDGE SIPPEL: Think of it. Think
 19 of it. I mean, if you - I mean if you've been
 20 - if you've been brainwashed by, you know, by
 21 reality shows like you're talking about, like
 22 Bullets and Bombs -

1 THE WITNESS: Hooks and Bullets?

2 JUDGE SIPPEL: - or Hooks and -
3 yes. Your thought process - I mean, your
4 rationality - or your rationalization process
5 in terms of can I do that, is that a good idea
6 to go that next level now and not wait for
7 tomorrow is - sort of becomes cloudy. Who's
8 the guy that's going to stand up and say wait
9 a minute, wait a minute, we better think about
10 doing that. The woman will, the woman will.

11 THE WITNESS: I've often thought
12 that men are the - by nature's design the
13 canary in the coal mine for women, you know?
14 Send them out and if they come back we'll go.

15 JUDGE SIPPEL: Well that holds -
16 that would hold true. I don't know if there's
17 been a statistical analysis done on that
18 though. Okay, I'm finished, I'm finished.

19 MR. TOSCANO: Thank you, Your
20 Honor. Mr. Egan, you also analyzed
21 differences in the timeliness of the event
22 coverage on the three channels. Could you

1 tell us the conclusions that you reached from
2 that analysis?

3 THE WITNESS: Sure. There's a lot
4 of data in here, Your Honor, so I'll try and
5 just summarize this for you. So, with
6 sporting events on television I think it's my
7 opinion that immediacy, covering it while it's
8 happening or immediately thereafter is a very,
9 very important factor to consumers. In
10 today's world where you know the results of
11 everything minutes after it occurs I think
12 playing something after it's over is of
13 marginal importance. People's attention move
14 on. And I think sports is a very perishable
15 commodity, sports on television is a very
16 perishable commodity for that. You know, if
17 I wasn't involved in this I could tell you who
18 won the Nationals game last night because I'm
19 a diehard Met fan but -

20 JUDGE SIPPEL: Oh that's too bad.
21 They beat my team twice in a row.

22 THE WITNESS: They won last night

1 again?

2 JUDGE SIPPEL: Well, they were
3 given the game.

4 (Laughter)

5 JUDGE SIPPEL: The Nats went into
6 the - they went into the ninth inning well
7 ahead and they managed to give it to them.

8 THE WITNESS: The Nats went into
9 the -

10 JUDGE SIPPEL: Yes, they went into
11 the ninth inning and they brought in their
12 closer.

13 THE WITNESS: Who -

14 JUDGE SIPPEL: Who is not named
15 Mariano Rivera.

16 THE WITNESS: Who is the closer?

17 JUDGE SIPPEL: I think it's
18 something like Burdette or Burnette.

19 THE WITNESS: Oh, okay. All
20 right.

21 JUDGE SIPPEL: I think he - who
22 was the closer I think is the way to say it.